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4 **UNITED STATES OF AMERICA**
5 **BEFORE THE NATIONAL LABOR RELATIONS BOARD**

6 SEATTLE UNIVERSITY,

Case No. 19-RC-122863

7 Employer,
8 and

9 SERVICE EMPLOYEES INTERNATIONAL
10 UNION, LOCAL 925,

**SEATTLE UNIVERSITY'S
STATEMENT IN OPPOSITION TO
REQUEST FOR SPECIAL
PERMISSION TO APPEAL**

Petitioner.

11 Seattle University ("the University") opposes SEIU Local 925's ("the Petitioner") June 9,
12 2014 Request for Special Permission to Appeal the Regional Director's Decision to Impound
13 Ballots, and Seeking Order to Count Ballots. There are four primary grounds on which the
14 Board should deny this request: (1) The Petitioner filed its Request under 29 CFR §102.26,
15 pertaining to unfair labor practices, which does not apply in representation case proceedings, and
16 its Request was not "prompt" in any event; (2) 29 CFR §102.67 requires ballot impoundment;
17 (3) The Petitioner's reliance on *Duquesne University of the Holy Spirit* is flawed, because the
18 employer in that case had signed a Stipulated Election Agreement, and statutory jurisdiction was
19 the only issue subject to Board review; and (4) Because the Board's statutory jurisdiction is
20 among the issues requiring Board review in the present case, the Board must first resolve that
21 issue before ordering the Regional Director to open and count ballots.

1 1. 29 CFR §102.26, on which the Petitioner relies, pertains to unfair labor practice
2 cases and not representation cases.

3 The Petitioner brings its Request under 29 CFR §102.26, which relates to the
4 administrative processing of unfair labor practice charges, and not representation cases. There is
5 no pending unfair labor practice charge in the instant case, so the Petitioner's reliance on this
6 regulation to support its Request is in error. Even if the Petitioner properly filed its Request, it
7 did not comply with the regulation it cites. Under 29 CFR §102.26, a request for special
8 permission to appeal "shall be filed promptly." This did not happen in this case. The University
9 filed its Request for Review on April 30, 2014 which triggered automatic ballot impoundment.
10 The Petitioner filed its Statement in Opposition on May 8, 2014. The Petitioner waited until
11 June 9, 2014, seven days after the close of mail balloting and 40 days after the University's
12 Request for Review, to file its Request. This is not "prompt" under the regulation it cites, and
13 the Petitioner offers no justification for, or explanation of, its unreasonable delay in making this
14 request.

15 2. 29 CFR §102.67(b) requires the Regional Director to impound the ballots.

16 The Board's regulations require the Regional Director to impound ballots pending the
17 Board's consideration of the University's Request for Review. 29 CFR §102.67(b). According
18 to the Board's *Casehandling Manual, Part 2, Representation Proceedings* ("*Casehandling*
19 *Manual*");

20 The filing of a request for review shall not, unless otherwise ordered by the Board,
21 operate as a stay of any action taken or directed by the Regional Director, including the
22 direction or conduct of an election, except that the Regional Director, in the absence of a
23 waiver, may not open and count any ballots that may be challenged until the Board has
24 ruled on any request for review that may be filed.

1 *Casehandling Manual*, §11274; *See, also NLRB, An Outline of Law and Procedures in*
2 *Representation Cases*, §3-880 (“The filing of such a request [for review] or the grant of review
3 does not, ‘unless otherwise ordered by the Board,’ operate as a stay of any action taken or
4 directed by the Regional Director...In that event, the voters whose eligibility is being questioned
5 in the request for review will be challenged and their ballots impounded.”). The Petitioner asks
6 the Board to disregard the Board’s regulations and its guidance manuals in order to satisfy the
7 Petitioner’s curiosity about the election results. This is not a compelling reason to disregard the
8 regulations and established Board policy in support of those regulations.

9 3. *The Petitioner’s reliance on the Duquesne case is flawed because that case*
10 *involved statutory jurisdiction only, and the employer had already signed a*
Stipulated Election Agreement.

11 The Petitioner cites *Duquesne University of the Holy Spirit* (“*Duquesne*”), 06-RC-080933
12 (decided September 14, 2012), to support its Request for the Board to order the ballots opened
13 and counted. Unlike the instant case, *Duquesne* involved an employer that had already signed a
14 Stipulated Election Agreement and who was seeking to withdraw from that agreement. The
15 Board denied *Duquesne*’s special appeal to withdraw from the agreement. By ordering the
16 Regional Director to open the ballots based on the parties’ stipulation, the Board was, in essence,
17 preserving the *status quo*.

18 In addition, the sole issue in *Duquesne* is whether the Board has statutory jurisdiction
19 over *Duquesne*. Here, the University has requested review of three issues *in addition* to statutory
20 jurisdiction: Whether the University’s full-time non-tenure track faculty are managers under the
21 Supreme Court’s *Yeshiva* decision, whether the full-time and part-time non-tenure track faculty
22 share a community of interest, and whether the faculty in the College of Nursing and the School
23 of Law should have been included in the proposed bargaining unit. Because of this, it will be
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1 necessary for the Board to decide these unit issues before allowing votes to be counted because
2 they impact the size, composition and scope of the proposed unit. The efficiencies that may have
3 motivated the Board to rule the way it did in *Duquesne* are not present here. No matter the
4 outcome of the ballot count, it will still be necessary for the Board to address the contentions
5 raised in the University's Request for Review because those contentions implicate the size,
6 composition and scope of the voting unit and voter eligibility. *See, e.g., NLRB v. Parsons School*
7 *of Design*, 793 F.2d 503, 507 (2d Cir. 1986)(Upon Board review, post-election modification of
8 proposed bargaining unit excluding full-time faculty members resulting in proposed unit of part-
9 time faculty members changed the character and scope of the unit; Court orders Board to hold a
10 second election); *NLRB v. Lorimar Productions*, 771 F.2d 1294, 1300-1302 (9th Cir., 1985)(Post-
11 election reduction in unit by 40 percent after Request for Review warranted new election).

12 4. *The Board must settle the issue of statutory jurisdiction before ordering ballots to*
13 *be opened and counted.*

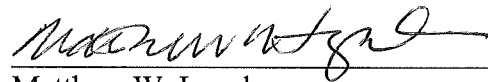
14 As noted by Member Hayes in his dissent in *Duquesne*, it is necessary for the Board to
15 settle the issue of its own jurisdiction before ordering the Regional Director to take further action
16 in this case. It is axiomatic that if the Board determines it has no jurisdiction then it may not take
17 any additional official action, including the issuance of orders, in a representation case. In fact, it
18 would be a needless expenditure of Board resources to continue to process an election in which
19 the Board eventually finds its jurisdiction lacking. Maintaining the *status quo* pending the
20 Board's determination of the University's Request for Review will also minimize confusion by
21 the faculty who will be affected by the Board's decision. The opening and counting of ballots
22 will serve no purpose while the issues of statutory jurisdiction, and the size, composition and
23 scope of the unit, are pending. Instead, it can result in unnecessary confusion should the Board
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1 determine afterwards that it has no jurisdiction, or that some sizable percentage of those who
2 voted should not have done so, or that others should have been given an opportunity to vote. It
3 is hard to fathom how employees' Section 7 rights are served in these scenarios.

4 For the reasons set forth above, the University respectfully requests the Board to deny the
5 Petitioner's Request.

6 Dated June 13, 2014.

7 Respectfully submitted,

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7 **UNITED STATES OF AMERICA**
BEFORE THE NATIONAL LABOR RELATIONS BOARD

8 SEATTLE UNIVERSITY,

Case No. 19-RC-122863

9 Employer,

10 and

CERTIFICATE OF SERVICE

11 SERVICE EMPLOYEES INTERNATIONAL
12 UNION, LOCAL 925,

13 Petitioner.

14 I, Matthew W. Lynch, certify under penalty of perjury under the laws of the United States
15 that, on June 13, 2014, I served Seattle University's Statement in Opposition to Request for
16 Special Permission to Appeal to the parties listed below in the manner shown:

17 Mr. Gary Shinnars	<input checked="" type="checkbox"/>	By NLRB E-Filing
Executive Secretary	<input type="checkbox"/>	By United States Mail
18 National Labor Relations Board	<input type="checkbox"/>	By Legal Messenger
1099 14th St. N.W.	<input type="checkbox"/>	By Facsimile
19 Washington, D.C. 20570-0001	<input type="checkbox"/>	Via Electronic Mail

20 Mr. Paul Drachler	<input type="checkbox"/>	By NLRB E-Filing
21 Douglas Drachler McKee & Gilbrough LLP	<input type="checkbox"/>	By United States Mail
1904 3 rd Avenue, Suite 1030	<input type="checkbox"/>	By Legal Messenger
22 Seattle, Washington 98101-1170	<input type="checkbox"/>	By Facsimile
23 <u>pdrachler@qwestoffice.net</u>	<input checked="" type="checkbox"/>	By Electronic Mail

24 
25 Matthew W. Lynch